

Exhibit 2

Fair Isaac Corporation v. Federal Insurance
Company et al.
Court File No. 16-cv-1054

<p>1 UNITED STATES DISTRICT COURT 2 DISTRICT OF MINNESOTA</p> <p>3 ----- 4 Fair Isaac Corporation,) File No. 16-cv-1054(DTS) 5 a Delaware Corporation,) 6 Plaintiff,) 7 v.) 8 Federal Insurance Company,) Courtroom 14W 9 an Indiana corporation,) Minneapolis, Minnesota 10 and ACE American Insurance) Tuesday, February 21, 2023 11 Company, a Pennsylvania) 8:54 a.m. 12 Corporation,) 13 Defendants.) 14 -----</p> <p>15 BEFORE THE HONORABLE DAVID T. SCHULTZ 16 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE</p> <p>17 (JURY TRIAL PROCEEDINGS - VOLUME IV)</p> <p>18 19 20 21 22 Proceedings recorded by mechanical stenography; 23 transcript produced by computer. 24 * * * 25</p>	<p>516</p> <p>1 I N D E X 2 PAGE</p> <p>3 JANDEEN BOONE 4 Cross-Examination (Resumed) By Ms. Godesky 520 5 Redirect Examination By Mr. Hinderaker 538</p> <p>6 CHRISTOPHER PATRICK IVEY 7 Direct Examination By Ms. Kliebenstein 539 8 Cross Examination By Ms. Janus 597 9 Redirect Examination By Ms. Kliebenstein 612</p> <p>10 RAMESH PANDEY 11 Cross Examination By Mr. Hinderaker 621 12 Direct Examination 684 13 Recross Examination By Mr. Hinderaker 707</p> <p>14 15 16 17 18 19 20 21 22 23 24 25</p> <p>518</p> <p>12 DEFENDANTS' EXHIBITS REC'D 13 D280 533</p>
<p>1 APPEARANCES: 2 For Plaintiff: MERCHANT & GOULD P.C. 3 BY: ALLEN W. HINDERAKER 4 HEATHER J. KLIEBENSTEIN 5 PAIGE S. STRADLEY 6 MICHAEL A. ERBELE 7 JOSEPH W. DUBIS 8 GABRIELLE L. KIEFER 9 150 South Fifth Street, #2200 10 Minneapolis, Minnesota 55402</p> <p>11 For Defendants: FREDRIKSON & BYRON 12 BY: TERRENCE J. FLEMING 13 LEAH C. JANUS 14 CHRISTOPHER D. PHAM 15 RYAN C. YOUNG 16 PANHIA VANG 17 200 South Sixth Street, #4000 18 Minneapolis, Minnesota 55402</p> <p>19 O'MELVENY & MYERS LLP 20 BY: LEAH GODESKY 21 ANTON METLITSKY 22 DARYN E. RUSH 23 ROXANA GUIDERO 24 Times Square Tower 25 7 Times Square New York, New York 10036</p> <p>26 Court Reporters: RENEE A. ROGGE, RMR-CRR KRISTINE MOUSSEAU, CRR-RPR MARIA V. WEINBECK, RMR-FCRR PAULA RICHTER, RMR-CRR-CRC United States District Courthouse 300 South Fourth Street, Box 1005 Minneapolis, Minnesota 55415</p> <p>27 * * *</p>	<p>519</p> <p>1 8:54 A.M.</p> <p>2 3 (In open court with the Jury present.) 4 THE COURT: Go ahead and be seated. 5 Good morning, Members of the Jury. I hope you all 6 had a good, long weekend. 7 I'm going to let you know this now since we know 8 it, I know it. The Chief Judge of the District has 9 indicated that he is going to some time today, probably this 10 morning yet, he will order closure of the courthouse on 11 Wednesday and Thursday in light of the incoming, you know, 12 snow-mageddon. So I can tell you right now that we won't 13 have court on Wednesday and Thursday. 14 I know that we also -- supposedly the snow is 15 going to start here about one o'clock this afternoon. We're 16 going to be keeping our eye on it and getting information 17 from a couple of localities, in particular, because I know 18 there is some of you that are driving a great distance. And 19 we'll make that call as things play out, but I'm more 20 inclined to say we end early today so that you can, you 21 know, drive through the blizzard in daylight conditions so 22 that you get to see it in all its glory, as opposed to 23 driving at night. Okay? 24 Yes, ma'am. 25 JUROR: I have a question. I live a quarter mile</p>

<p style="text-align: right;">596</p> <p>1 Q. And based on the contents of this row, does it raise any</p> <p>2 red flags for you, ignoring that last column as to anything?</p> <p>3 A. Again, no, it wouldn't have raised any red flags. We</p> <p>4 had done a lot of work with Chubb & Son, and this was a</p> <p>5 normal case coming from a Chubb.com e-mail address and no</p> <p>6 red flags.</p> <p>7 Q. All right. Let's move up to the very top row. Can you</p> <p>8 just read for me the description in that third column. Read</p> <p>9 just the first few sentences.</p> <p>10 A. "Hi, product support team. Below is an issue faced by a</p> <p>11 consultant whose client is Chubb. Chubb seems to be an</p> <p>12 existing BA user. He has been struggling to upgrade the</p> <p>13 Blaze project on his own and he needs assistance with it."</p> <p>14 Q. And to the best of your knowledge, Mr. Ivey, the three,</p> <p>15 the three instances, the yellow highlighting rows that we</p> <p>16 just looked at, do you know one way or another, the product</p> <p>17 support team, did they provide support for those services?</p> <p>18 A. They did provide support I believe in two of the cases.</p> <p>19 I think in the first case, there was a red flag for us, and</p> <p>20 we raised some questions about it.</p> <p>21 Q. And does the role of the product support team at FICO,</p> <p>22 did they, for lack of a better phrase, do they check ID's at</p> <p>23 the door, you know, when folks are calling in for help as to</p> <p>24 who is a licensee?</p> <p>25 A. No, we don't. We typically -- again, if we see</p>	<p style="text-align: right;">598</p> <p>1 A. That's correct.</p> <p>2 Q. You were under oath during those depositions just like</p> <p>3 you are giving testimony here in court today, correct?</p> <p>4 A. That was my understanding, yes.</p> <p>5 Q. And one of your depositions was in January of 2019 and</p> <p>6 one was in March of 2019. Does that sound about right?</p> <p>7 A. That sounds about right.</p> <p>8 Q. And you'll see that I just handed you the transcripts</p> <p>9 just in case we need to reference there, and there are tabs</p> <p>10 indicating which transcript is which. Okay?</p> <p>11 A. Perfect. Yes.</p> <p>12 Q. And you don't have to have that open in front of you.</p> <p>13 A. Okay.</p> <p>14 Q. It's just in case.</p> <p>15 A. Okay. Understood.</p> <p>16 Q. Let's start where you just left off with P1112.</p> <p>17 A. Okay.</p> <p>18 Q. If we could pull that up.</p> <p>19 So this is the call log that has been prepared by</p> <p>20 FICO from FICO systems, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And if we look at row 4, which you were just testifying</p> <p>23 about --</p> <p>24 A. Okay. Yep.</p> <p>25 Q. -- I think we are going to get it on the screen, too, in</p>
<p style="text-align: right;">597</p> <p>1 something that's unusual, we might, we might raise it, but</p> <p>2 really that wasn't our job. And if there were, if there</p> <p>3 were issues where we were not supposed to provide support</p> <p>4 for a customer, that would typically come from our sort of</p> <p>5 accounting team, accounting legal teams, who would instruct</p> <p>6 us to not -- you know, somebody hasn't paid or whatever it</p> <p>7 might be. They would instruct us to cease support; but</p> <p>8 other than that, we would proceed as usual.</p> <p>9 Q. And how often does that, does that happen when somebody</p> <p>10 reaches out to product support that doesn't have a license</p> <p>11 to use Blaze Advisor?</p> <p>12 A. Not, not often.</p> <p>13 MS. KLIEBENSTEIN: Okay. No further questions.</p> <p>14 THE COURT: Ms. Janus?</p> <p>15 THE WITNESS: Thank you.</p> <p>16 CROSS EXAMINATION</p> <p>17 BY MS. JANUS:</p> <p>18 Q. Good morning, Mr. Ivey.</p> <p>19 A. Good morning.</p> <p>20 Q. My name is Leah Janus, and I'm counsel for defendants in</p> <p>21 this case. We met several years ago now, when you sat for a</p> <p>22 deposition in this case, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And you actually sat for two depositions in this case,</p> <p>25 correct?</p>	<p style="text-align: right;">599</p> <p>1 just a moment.</p> <p>2 A. That will help.</p> <p>3 Q. There we go. Row 4, this shows that FICO provided</p> <p>4 support to Chubb or one of its affiliates in Europe relating</p> <p>5 to Blaze, correct?</p> <p>6 A. In line 4, so if you can scroll --</p> <p>7 Q. Yep.</p> <p>8 A. It lists that we did provide support to David Gibbs at</p> <p>9 Chubb, yes.</p> <p>10 Q. Okay. And you testified that there were no red flags?</p> <p>11 A. Correct, from what the engineer would typically be</p> <p>12 looking for, if anything.</p> <p>13 Q. And what would you characterize as a red flag? What did</p> <p>14 you mean by that?</p> <p>15 A. So, just in looking at this, so a different e-mail</p> <p>16 address or a question that seemed very odd, perhaps, but in</p> <p>17 this case it was coming from someone at Chubb.com and seemed</p> <p>18 I think a reasonable request, and so I don't think it piqued</p> <p>19 any interest.</p> <p>20 Q. And you made a point of saying that the entry stating</p> <p>21 United Kingdom in the last row wouldn't have been in this</p> <p>22 data poll originally, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. But the description of the query further over to the</p> <p>25 left indicates that the query is coming from London, Europe,</p>

<p>1 UNITED STATES DISTRICT COURT 2 DISTRICT OF MINNESOTA</p> <p>3 ----- 4 Fair Isaac Corporation,) 5 a Delaware Corporation,) 6 Plaintiff,) 7 v.) 8 Federal Insurance Company,) Courtroom 14W 9 an Indiana corporation,) Minneapolis, Minnesota 10 and ACE American Insurance) Friday, February 24, 2023 11 Company, a Pennsylvania) 9:00 a.m. 12 Corporation,) 13 Defendants.) 14 -----</p> <p>15 BEFORE THE HONORABLE DAVID T. SCHULTZ 16 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE</p> <p>17 (JURY TRIAL PROCEEDINGS - VOLUME V)</p> <p>18 19 20 21 22 Proceedings recorded by mechanical stenography; 23 transcript produced by computer. 24 * * * 25</p>	<p>735</p> <p>1 I N D E X 2 PAGE</p> <p>3 LAWRENCE WACHS VIA DEPOSITION 4 Examination By Ms. Janus 739 5 Examination By Mr. Hinderaker 806</p> <p>6 THOMAS CARRETTA 7 Direct Examination By Mr. Hinderaker 843 8 Cross-Examination By Ms. Godesky 892 9 Redirect Examination By Mr. Hinderaker 934</p> <p>10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>9 10 DEFENDANTS' EXHIBITS REC'D 11 4 921 12 17 947 13 282 945 14 304 918</p>
<p>1 APPEARANCES: 2 For Plaintiff: MERCHANT & GOULD P.C. 3 BY: ALLEN W. HINDERAKER 4 HEATHER J. KLIEBENSTEIN 5 PAIGE S. STRADLEY 6 MICHAEL A. ERBELE 7 JOSEPH W. DUBIS 8 GABRIELLE L. KIEFER 9 150 South Fifth Street, #2200 10 Minneapolis, Minnesota 55402</p> <p>11 For Defendants: FREDRIKSON & BYRON 12 BY: TERRENCE J. FLEMING 13 LEAH C. JANUS 14 CHRISTOPHER D. PHAM 15 RYAN C. YOUNG 16 PANHIA VANG 17 200 South Sixth Street, #4000 18 Minneapolis, Minnesota 55402</p> <p>19 O'MELVENY & MYERS LLP 20 BY: LEAH GODESKY 21 ANTON METLITSKY 22 DARYN E. RUSH 23 ROXANA GUIDERO 24 Times Square Tower 25 7 Times Square New York, New York 10036</p> <p>26 Court Reporters: RENEE A. ROGGE, RMR-CRR KRISTINE MOUSSEAU, CRR-RPR MARIA V. WEINBECK, RMR-FCRR PAULA RICHTER, RMR-CRR-CRC United States District Courthouse 300 South Fourth Street, Box 1005 Minneapolis, Minnesota 55415</p> <p>* * *</p>	<p>736</p> <p>1 9:00 A.M. 2 3 (In open court with the Jury present.) 4 THE COURT: Good morning. Please be seated go 5 ahead and be seated. 6 All right. Good morning, Members of the Jury. 7 Thanks, everyone, for making it in here. I don't know how 8 bad your commutes were, but thanks for making it. 9 Mr. Hinderaker, are you ready to proceed? 10 MR. HINDERAKER: We are, Your Honor. 11 THE COURT: All right. Why don't you, you need to 12 explain what's going on now? 13 MR. HINDERAKER: I do. I do. 14 THE COURT: Go right ahead. 15 MR. HINDERAKER: Our first witness this morning is 16 a gentleman by the name of Larry Wachs, Lawrence Wachs, and 17 he will be showing -- his testimony will be presented by 18 video, so I will read this introduction about him. 19 Lawrence Wachs is a former FICO employee, now 20 living in New York, whose deposition was taken February 26, 21 2019. His role was in sales; and when he left FICO, his 22 title was sales executive. He was with FICO from 2006 to 23 2008. 24 Mr. Wachs' deposition was taken by Leah Janus, one 25 of the counsel for defendants. There may be another voice</p>

<p style="text-align: right;">887</p> <p>1 the United States and two applications utilized in the</p> <p>2 United Kingdom. Moreover, during the period of time in</p> <p>3 which FICO and new Chubb attempted resolve the breach of</p> <p>4 Section 10.8, we became aware of the further application in</p> <p>5 Canada." I'll stop there.</p> <p>6 What was the source of your information to make</p> <p>7 that statement?</p> <p>8 A. I can't recall it specifically, but I thought it was me</p> <p>9 that asked the maintenance and support organization to look</p> <p>10 at the maintenance logs.</p> <p>11 Q. Okay.</p> <p>12 A. So this is a process where they, a client is given a</p> <p>13 key. If they have bugs to report or need information, they</p> <p>14 just log something into the system, and then it gets</p> <p>15 captured.</p> <p>16 Q. That would be the same thing as a help desk log?</p> <p>17 A. The same thing.</p> <p>18 Q. So the information that you were stating in this letter</p> <p>19 came to you from help desk log information?</p> <p>20 A. That's correct.</p> <p>21 Q. Then you go on to say, "And the disclosure of</p> <p>22 confidential information to an unauthorized third-party</p> <p>23 consultant."</p> <p>24 And what was the source of your information to say</p> <p>25 that in the letter?</p>	<p style="text-align: right;">889</p> <p>1 infringement of all applicable intellectual property rights,</p> <p>2 including but not limited FICO's underlying copyrights and</p> <p>3 patents."</p> <p>4 I'd like to then, I'd like to turn then, if we</p> <p>5 could, to paragraph 9.3 of the license agreement J1, J001.</p> <p>6 A. Okay.</p> <p>7 Q. Let me get there myself. And paragraph 9.3 is entitled</p> <p>8 Effect of Termination. Agreed?</p> <p>9 A. Yes. That is correct.</p> <p>10 Q. And it says, "Upon expiration or termination of this</p> <p>11 agreement for any reason, all licenses granted hereunder</p> <p>12 shall terminate immediately. All support and maintenance</p> <p>13 obligations shall cease. Client shall immediately cease</p> <p>14 using all Fair Isaac products and related documentation</p> <p>15 (including all intellectual property arising from or related</p> <p>16 to the foregoing), shall remove all copies of the Fair Isaac</p> <p>17 products and related documentation from client's computer</p> <p>18 systems," and so on.</p> <p>19 And that is the provision that you were</p> <p>20 specifically referencing regarding the effect of termination</p> <p>21 in your notice of breach letter?</p> <p>22 A. That is correct.</p> <p>23 Q. And shortly after that, this lawsuit was commenced.</p> <p>24 Have you had any -- did you have any involvement,</p> <p>25 other than being a witness, did you have any involvement in</p>
<p style="text-align: right;">888</p> <p>1 A. The same, same source.</p> <p>2 Q. Okay. Thank you. Then you finish, "This information</p> <p>3 was conveyed to the new Chubb business counter part Tamra</p> <p>4 Pawloski, VP of software compliance and optimization."</p> <p>5 Now, when you say that disclosure of confidential</p> <p>6 information to an unauthorized third party is a breach, is</p> <p>7 that a reference to paragraph 3.1 of the license agreement?</p> <p>8 A. One moment. Yes.</p> <p>9 Q. And when you said that Blaze Advisor software outside of</p> <p>10 the United States and the United Kingdom and in Canada, what</p> <p>11 was the basis of -- what in the license agreement led you to</p> <p>12 believe that that was a breach?</p> <p>13 A. The reference to territory in paragraph 1 of the license</p> <p>14 agreement.</p> <p>15 Q. Saying?</p> <p>16 A. That the software is to be installed and physically</p> <p>17 located in the United States.</p> <p>18 Q. And then you conclude your letter, "Attempts to amicably</p> <p>19 resolve the dispute have been unsuccessful. This letter</p> <p>20 serves as notice that the agreement is terminated effective</p> <p>21 March 31st. Please take further notice of the provisions of</p> <p>22 Section 9.3 of the agreement.</p> <p>23 "As noted in my January 27, 2016, letter, FICO</p> <p>24 considers new Chubb's current use and any future use of the</p> <p>25 software as a breach of the agreement and willful</p>	<p style="text-align: right;">890</p> <p>1 the management or handling of this lawsuit?</p> <p>2 A. No.</p> <p>3 Q. Your participation or your role in this whole matter is,</p> <p>4 is that of a witness?</p> <p>5 A. That is correct.</p> <p>6 MR. HINDERAKER: No further questions, Your Honor.</p> <p>7 THE COURT: Ms. Godesky.</p> <p>8 MS. GODESKY: Your Honor, may I approach?</p> <p>9 THE COURT: You may.</p> <p>10 (Sidebar discussion)</p> <p>11 MS. GODESKY: So given Mr. Carretta's reference</p> <p>12 just now in this last line of questions to his view that the</p> <p>13 license agreement has a territorial restriction, I would</p> <p>14 like to either be able to ask Mr. Carretta, as you suggested</p> <p>15 during the pretrial conference, whether he's aware that the</p> <p>16 court has held that the license agreement unambiguously does</p> <p>17 not include a territory restriction or that Your Honor</p> <p>18 instruct the jury to that fact.</p> <p>19 MR. HINDERAKER: And I disagree for all the</p> <p>20 reasons that we've argued before and all the reasons that</p> <p>21 the court should not interfere with this issue of whether</p> <p>22 FICO acted in good faith or not.</p> <p>23 THE COURT: I understand the question to</p> <p>24 Mr. Carretta. It's an appropriate question. It asks him</p> <p>25 for why he said it, what's your good faith basis.</p>

<p style="text-align: right;">899</p> <p>1 it sound right that it was \$350,000?</p> <p>2 A. I think it was a little more than that, 355, something</p> <p>3 like that. I see it is 350 plus maintenance.</p> <p>4 Q. Okay. And then the enterprise-wide amendment in</p> <p>5 December 2006 increased the price to 1.3 million, correct?</p> <p>6 A. Right, with credit for the fees they had already paid.</p> <p>7 Q. Okay. Now, I want to take a look at that December 2006</p> <p>8 amendment that came with that price tag increase up to</p> <p>9 \$1.3 million.</p> <p>10 So, Vanessa, if we could pull up J1. It's already</p> <p>11 in evidence. And I want to look, if we could, at page 20.</p> <p>12 And so, Mr. Carretta, just so you have your</p> <p>13 bearings, and you can look at the hard copy, we're now in</p> <p>14 the December 2006 amendment. Okay?</p> <p>15 A. Correct.</p> <p>16 Q. And the top of the second page says, "For purposes of</p> <p>17 this Amendment Two, the enterprise-wide license shall mean</p> <p>18 that client and its affiliates may use the Fair Isaac</p> <p>19 product." Right?</p> <p>20 And then it goes on to talk about internal</p> <p>21 business purposes and no limitation on the number of seats</p> <p>22 or CPUs, correct?</p> <p>23 A. Yes, it says what it -- I mean, what you have on your</p> <p>24 screen.</p> <p>25 Q. Okay. And that language was not in the two prior Blaze</p>	<p style="text-align: right;">901</p> <p>1 right.</p> <p>2 Q. So there was no expansion with this new language and the</p> <p>3 \$1.3 million price tag.</p> <p>4 A. No. That's what they apparently negotiated. That's</p> <p>5 right.</p> <p>6 Q. And your view is that Chubb paid all this extra money</p> <p>7 for this new reference to affiliates because one day down</p> <p>8 the road the Chubb & Son division of Federal might, one,</p> <p>9 turn itself into a legal entity; and, two, acquire</p> <p>10 affiliates that might need to use Blaze.</p> <p>11 A. I don't agree with that. I don't know why Chubb would</p> <p>12 want that language.</p> <p>13 Q. Okay. Mr. Carretta, we have a binder in front of you</p> <p>14 that has a copy of your October 9th, 2018, deposition. Can</p> <p>15 you find that tab, please.</p> <p>16 A. You said in October?</p> <p>17 Q. October 9th, yes.</p> <p>18 A. I have it.</p> <p>19 Q. And if I could direct your attention to page 122,</p> <p>20 line 14.</p> <p>21 A. Okay. Page 122.</p> <p>22 Q. Line 14. Question, "You testified that Chubb & Son</p> <p>23 could not have any affiliates, as far as you understand it?</p> <p>24 "Answer: At the point of time that this contract</p> <p>25 was entered, Chubb & Son was not a legal entity in and of</p>
<p style="text-align: right;">900</p> <p>1 license agreements, the ones from earlier in 2006, right?</p> <p>2 This was new language.</p> <p>3 A. Right. That's new language.</p> <p>4 Q. And you understand now that Federal Insurance Company</p> <p>5 has global affiliates in Chubb Australia, Chubb Europe, and</p> <p>6 Chubb Canada. You've come to have that understanding,</p> <p>7 right?</p> <p>8 A. Could you repeat that?</p> <p>9 Q. You've come to understand, Mr. Carretta, that Federal</p> <p>10 Insurance Company has affiliates like Chubb Canada, Chubb</p> <p>11 Australia, and Chubb Europe, correct?</p> <p>12 A. Federal does. That's correct.</p> <p>13 Q. Okay. And you anticipated my next question, because the</p> <p>14 Chubb & Son division of Federal, the only entity that FICO</p> <p>15 now says could use the Blaze program, they didn't have any</p> <p>16 affiliates as of December 2006, correct?</p> <p>17 A. Chubb & Sons is not an affiliate.</p> <p>18 Q. Chubb & Son doesn't have affiliates because it's not a</p> <p>19 legal entity, right?</p> <p>20 A. That is correct.</p> <p>21 Q. So in your view, since Chubb & Son is the only client,</p> <p>22 the addition of all this language about how now client and</p> <p>23 its affiliates can use Blaze did not actually expand Chubb's</p> <p>24 ability to use Blaze at all, right?</p> <p>25 A. It was still captured within Chubb & Sons. That's</p>	<p style="text-align: right;">902</p> <p>1 itself. Therefore, it could not have had affiliates within</p> <p>2 the meaning of the definition, but things could change in</p> <p>3 the future. They could incorporate as a separate business,</p> <p>4 in which case as an entity they could then have the</p> <p>5 potential to have an affiliate, but at the time they did not</p> <p>6 have that possibility.</p> <p>7 "And I don't believe they've ever incorporated.</p> <p>8 And if they incorporated, it would have implicated the</p> <p>9 balance of the agreement as well so you would have to look</p> <p>10 at it. So it wasn't meaningless language, and it was</p> <p>11 important to Chubb, I believe, to preserve their future."</p> <p>12 Was that your testimony at your deposition?</p> <p>13 A. That is correct.</p> <p>14 Q. Okay. And, of course, whether Chubb had any concerns</p> <p>15 back in 2006 about preserving its future, you wouldn't be</p> <p>16 able to speak to that because you were not involved in the</p> <p>17 negotiations at the time, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. This is just an explanation that you've come up with</p> <p>20 after reviewing the contract for the first time in 2015,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 THE COURT: Ms. Godesky, are you at a convenient</p> <p>24 breaking point?</p> <p>25 MS. GODESKY: I am. Thank you.</p>

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<p>1 A. We began to become curious about who was using the</p> <p>2 software.</p> <p>3 Q. And in the regular course of business, Mr. Carretta, you</p> <p>4 don't usually scan maintenance logs for potential problems</p> <p>5 with your customers, right?</p> <p>6 A. I don't.</p> <p>7 Q. And you don't direct people to do that either, right?</p> <p>8 A. I don't direct people to do that.</p> <p>9 Q. And it would have been helpful for you in this time</p> <p>10 period, after the ACE acquisition was announced, if you</p> <p>11 could find more potential problems with Chubb's use of</p> <p>12 Blaze, correct?</p> <p>13 A. Not necessarily, no.</p> <p>14 Q. But it might give you more potential leverage in any</p> <p>15 breach letters that you might want to send or conversations</p> <p>16 that you want to have with Chubb, correct?</p> <p>17 A. Not necessarily.</p> <p>18 Q. But you did end up citing the use of Blaze by these</p> <p>19 consultants, just like you cited use of Blaze in Europe, in</p> <p>20 your termination letter, correct?</p> <p>21 A. I reference it in my termination letter. That's</p> <p>22 correct.</p> <p>23 Q. You referred to them as material breaches.</p> <p>24 A. Yes.</p> <p>25 Q. And based on those material breaches, you said that the</p>	<p>1 Q. But my question is whether you did anything to</p> <p>2 investigate the magnitude of this issue.</p> <p>3 A. No, because of what I just said. It's an absolute, you</p> <p>4 are not allowed to do this.</p> <p>5 Q. And did you ever identify any evidence that AppCentrica</p> <p>6 or DWS accessed Blaze for any purpose other than assisting</p> <p>7 Chubb in its work on one of its internal computer</p> <p>8 applications?</p> <p>9 A. I don't know what they did. I don't remember.</p> <p>10 Q. So you have not identified any evidence that AppCentrica</p> <p>11 or DWS accessed Blaze for any purpose other than assisting</p> <p>12 Chubb, correct?</p> <p>13 A. The only thing I know is that they showed up in the</p> <p>14 maintenance logs. I was told that. But I don't remember</p> <p>15 any of the details that you are asking about.</p> <p>16 Q. Okay. So I'm going to ask my question one more time.</p> <p>17 You have no evidence that AppCentrica or DWS accessed Blaze</p> <p>18 for any purpose other than to assist Chubb in its computer</p> <p>19 application work, correct?</p> <p>20 A. I just told you I don't remember. I don't believe I was</p> <p>21 told that.</p> <p>22 Q. So that's a no. You don't have any evidence?</p> <p>23 A. I don't personally have any evidence, no.</p> <p>24 Q. And are you aware of any evidence that anyone at</p> <p>25 AppCentrica or DWS shared Blaze with any third party outside</p>
912	914
<p>1 next day the contract was over and Chubb couldn't use Blaze</p> <p>2 anymore.</p> <p>3 A. Among the other breach, the obvious one we spent all day</p> <p>4 talking about.</p> <p>5 Q. Did you do anything to investigate the full extent of</p> <p>6 the use, like how many people at AppCentrica or DWS had laid</p> <p>7 eyes on the Blaze software?</p> <p>8 A. I did not personally, no.</p> <p>9 Q. Any use of Blaze in connection with this potential</p> <p>10 project in Australia would have been quite small in the</p> <p>11 context of an enterprise-wide license like Chubb had,</p> <p>12 correct?</p> <p>13 A. I don't know that.</p> <p>14 Q. Well, an enterprise-wide license means that you can use</p> <p>15 the software in an unlimited number of applications, right?</p> <p>16 A. I thought it was limited to the number of applications.</p> <p>17 I'd have to look at the agreement to see how they defined it</p> <p>18 again.</p> <p>19 Q. So you can't -- you can't speak at all to the relative</p> <p>20 impact of this issue with DWS and AppCentrica relative to</p> <p>21 the size of Chubb's use of Blaze and the scope of its</p> <p>22 license?</p> <p>23 A. Well, it's more of an absolute. We don't guess that,</p> <p>24 oh, this one is important. It was just two guys that looked</p> <p>25 at it, versus Accenture.</p>	<p>1 Chubb?</p> <p>2 A. I don't know. I just know that third parties accessed</p> <p>3 the software.</p> <p>4 Q. So that's a no.</p> <p>5 A. They are there in the log.</p> <p>6 Q. So that's a no.</p> <p>7 A. No. That's just what I said.</p> <p>8 Q. Mr. Carretta, I'm entitled to an answer to the question</p> <p>9 I'm asking. Are you aware of any evidence that anyone at</p> <p>10 AppCentrica or DWS shared Blaze with any third party outside</p> <p>11 Chubb?</p> <p>12 A. Not that I'm aware of, other than that they appear in</p> <p>13 the logs.</p> <p>14 Q. Okay. Let's talk about Section 10.8 and this whole</p> <p>15 concept of assignment.</p> <p>16 A. Okay.</p> <p>17 Q. During your direct examination, when you were talking</p> <p>18 about that letter you sent to Chubb on January 27th, 2016,</p> <p>19 you made a point of saying in your questioning with</p> <p>20 Mr. Hinderaker that Chubb had not responded to Sawyer and</p> <p>21 Schreiber at that point in time.</p> <p>22 Do you remember that?</p> <p>23 A. Yes.</p> <p>24 Q. I want to take a look at P131, which is already in</p> <p>25 evidence. And I want to go to page 3 of the PDF.</p>

<p style="text-align: right;">939</p> <p>1 entered into?</p> <p>2 A. That's correct.</p> <p>3 Q. Let me not hit this mic again.</p> <p>4 Let's go to -- you were asked some questions about</p> <p>5 your termination letter, 103. Plaintiff's Exhibit 0103.</p> <p>6 And keep the license agreement nearby as well. In fact --</p> <p>7 A. Okay.</p> <p>8 Q. -- on a reference, your termination letter, because in</p> <p>9 the termination letter you speak of the two applications</p> <p>10 outside the United States and then in Canada. I guess</p> <p>11 three?</p> <p>12 A. Yes.</p> <p>13 Q. Would you go to the license agreement J001?</p> <p>14 A. Okay.</p> <p>15 Q. And if we could go to the seventh page, please.</p> <p>16 A. Okay.</p> <p>17 Q. The license agreement does include a provision 10.5 that</p> <p>18 says Entire Agreement?</p> <p>19 A. That is correct.</p> <p>20 Q. It says it supercedes all prior or contemporaneous</p> <p>21 proposals, and all other oral or written understandings,</p> <p>22 representations, conditions and other communications between</p> <p>23 the parties.</p> <p>24 Agreed?</p> <p>25 A. Agreed.</p>	<p style="text-align: right;">941</p> <p>1 authority under that written policy to enter into agreements</p> <p>2 on behalf of FICO?</p> <p>3 MS. GODESKY: Objection.</p> <p>4 THE COURT: Overruled.</p> <p>5 THE WITNESS: No, they do not.</p> <p>6 BY MR. HINDERAKER:</p> <p>7 Q. You were asked some questions about consultants, third</p> <p>8 party. And you made the statement that the, the prohibition</p> <p>9 is absolute. The magnitude does not matter.</p> <p>10 What did you mean by that?</p> <p>11 A. Essentially the slightest infraction is a breach. That</p> <p>12 it effectively defines materiality. Lawyers sometimes call</p> <p>13 it strict liability.</p> <p>14 Q. Okay. Let's go to the license agreement again and</p> <p>15 paragraph 3.6.</p> <p>16 A. Okay.</p> <p>17 Q. Why don't you review it briefly so that you can get some</p> <p>18 context.</p> <p>19 A. Okay.</p> <p>20 Q. All right. And here in paragraph 3.6, FICO and Chubb &</p> <p>21 Son have agreed that one consultant, ACS Commercial</p> <p>22 Solutions, has the right to use Blaze Advisor software.</p> <p>23 Do you see that?</p> <p>24 A. That's correct.</p> <p>25 Q. And in fact paragraph 3.6 expressly says, does it not,</p>
<p style="text-align: right;">940</p> <p>1 Q. It goes on to say that, "Each party represents and</p> <p>2 warrants to the other party that entering into this</p> <p>3 agreement it does not rely on any representation, promises</p> <p>4 or assurances from any other party or employee," and so</p> <p>5 forth.</p> <p>6 And then it ends with the sentence, "Any other</p> <p>7 terms or conditions or amendments shall not be incorporated</p> <p>8 herein or be binding upon any party, unless expressly agreed</p> <p>9 to in a writing signed by authorized representatives of</p> <p>10 client and Fair Isaac."</p> <p>11 Agreed?</p> <p>12 A. Yes.</p> <p>13 Q. And then the license agreement also has a provision</p> <p>14 called 10.4, No Waiver.</p> <p>15 A. Yes.</p> <p>16 Q. And that provision ends, "No waiver of any rights of a</p> <p>17 party under this agreement will be effective unless set</p> <p>18 forth in a writing signed by the parties."</p> <p>19 Agreed?</p> <p>20 A. Agreed.</p> <p>21 Q. Now at Fair Isaac, as a matter of fact, does Fair Isaac</p> <p>22 have a policy that identifies those persons who have the</p> <p>23 ability to enter into an agreement on behalf of FICO?</p> <p>24 A. Yes.</p> <p>25 Q. Do salesmen like Mr. Sawyer or Mr. Schreiber have the</p>	<p style="text-align: right;">942</p> <p>1 that ACS Commercial Solutions is the information technology</p> <p>2 infrastructure operations outsourced to ACS Commercial</p> <p>3 Solutions?</p> <p>4 A. That's correct.</p> <p>5 Q. That's to say, ACS Commercial Solutions is going to be</p> <p>6 using Blaze Advisor for the benefit of Chubb & Son, the</p> <p>7 division?</p> <p>8 A. That's correct.</p> <p>9 Q. But to get that permission, it was negotiations of</p> <p>10 paragraph 3.6?</p> <p>11 A. Yes.</p> <p>12 Q. And 3.6 further says, "Provided that such use is</p> <p>13 otherwise subject to the terms and conditions of this</p> <p>14 agreement and does not exceed the limitations and use for</p> <p>15 other restrictions set forth herein." Correct?</p> <p>16 A. Yes. That's correct.</p> <p>17 Q. And it further says, "Client shall responsible," client</p> <p>18 Chubb & Son, "shall be responsible for assuring ACS's</p> <p>19 compliance with the terms and conditions of this agreement."</p> <p>20 Agreed? That's what it says?"</p> <p>21 A. Yes.</p> <p>22 Q. "And client shall be liable to Fair Isaac for any breach</p> <p>23 of the agreement by ACS." It says that?</p> <p>24 A. Yes.</p> <p>25 Q. "The rights granted to ACS herein shall not be extended</p>

<p>1 UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA</p> <p>2 -----</p> <p>3 Fair Isaac Corporation,) 4 a Delaware Corporation,) File No. 16-cv-1054(DTS)</p> <p>5 Plaintiff,)</p> <p>6 v.)</p> <p>7 Federal Insurance Company,) Courtroom 14W 8 an Indiana corporation,) Minneapolis, Minnesota 9 and ACE American Insurance) Wednesday, March 1, 2023 Company, a Pennsylvania) 9:00 a.m. Corporation,)</p> <p>10 Defendants.)</p> <p>11 -----</p> <p>12</p> <p>13</p> <p>14 BEFORE THE HONORABLE DAVID T. SCHULTZ 15 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE</p> <p>16 (JURY TRIAL PROCEEDINGS - VOLUME VIII)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Proceedings recorded by mechanical stenography; 22 transcript produced by computer.</p> <p>23 * * *</p> <p>24</p> <p>25</p>	<p>1438</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 RANDOLPH BICKLEY WHITENER</p> <p>4 Direct Examination (Resumed) By Mr. Hinderaker 1442</p> <p>5 Cross Examination By Ms. Godesky 1532</p> <p>6 Redirect Examination By Mr. Hinderaker 1599</p> <p>7</p> <p>8 N. WILLIAM PAUL WAID</p> <p>9 Direct Examination By Mr. Hinderaker 1606</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1439</p> <p>1 APPEARANCES:</p> <p>2 For Plaintiff: MERCHANT & GOULD P.C. BY: ALLEN W. HINDERAKER 3 HEATHER J. KLIEBENSTEIN 4 PAIGE S. STRADLEY MICHAEL A. ERBELE JOSEPH W. DUBIS 5 GABRIELLE L. KIEFER 150 South Fifth Street, #2200 6 Minneapolis, Minnesota 55402</p> <p>7 For Defendants: FREDRIKSON & BYRON BY: TERRENCE J. FLEMING 8 LEAH C. JANUS CHRISTOPHER D. PHAM 9 RYAN C. YOUNG PANHIA VANG 10 200 South Sixth Street, #4000 Minneapolis, Minnesota 55402</p> <p>11 O'MELVENY & MYERS LLP 12 BY: LEAH GODESKY ANTON METLITSKY 13 DARYN E. RUSH ROXANA GUIDERO 14 Times Square Tower 7 Times Square 15 New York, New York 10036</p> <p>16 Court Reporters: RENEE A. ROGGE, RMR-CRR KRISTINE MOUSSEAU, CRR-RPR 17 MARIA V. WEINBECK, RMR-FCRR PAULA RICHTER, RMR-CRR-CRC 18 United States District Courthouse 300 South Fourth Street, Box 1005 19 Minneapolis, Minnesota 55415</p> <p>20 * * *</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1441</p> <p>1 March 1, 2023 9:00 A.M.</p> <p>2</p> <p>3 (In open court without the Jury present.)</p> <p>4 THE COURT: Good morning. Be seated.</p> <p>5 We'll take up the issue with respect to</p> <p>6 Mr. Waid's testimony over the lunch hour. It is clear to</p> <p>7 me he is not getting on the stand before then. All right?</p> <p>8 MS. GODESKY: Yes.</p> <p>9 THE COURT: Okay.</p> <p>10 THE CLERK: All rise for the jury.</p> <p>11 (Jury enters.)</p> <p>12</p> <p>13</p> <p>14 (In open court with the Jury present.)</p> <p>15 THE COURT: Go ahead and be seated.</p> <p>16 Okay. Good morning. Thanks, everyone, for</p> <p>17 braving our slippery roads.</p> <p>18 Mr. Hinderaker, are you ready to proceed?</p> <p>19 MR. HINDERAKER: I am, Your Honor.</p> <p>20 THE COURT: Go ahead and recall Mr. Whitener</p> <p>21 back.</p> <p>22 MR. HINDERAKER: I would call Mr. Whitener.</p> <p>23 THE COURT: Whitener. Come on up, Mr. Whitener.</p> <p>24 THE WITNESS: Thank you.</p> <p>25 THE COURT: Just remind you as you're walking up,</p>

<p style="text-align: right;">1682</p> <p>1 A. No.</p> <p>2 Q. From your point of view, was the commercial purpose of</p> <p>3 the license agreement as signed, with the license agreement</p> <p>4 as signed, if there is, if there are no affiliates of the</p> <p>5 client, does that change anything in your view regarding</p> <p>6 the license agreement?</p> <p>7 A. No.</p> <p>8 Q. Why not?</p> <p>9 A. Still with the client.</p> <p>10 Q. Now, we saw in Mr. Carretta's notice of termination</p> <p>11 letter that it was effective, excuse me, effective the next</p> <p>12 day. And he referenced in that letter paragraph 9.3 of the</p> <p>13 license agreement. So let's just go to that for a moment.</p> <p>14 Effective termination. We all can read it.</p> <p>15 Client shall immediately cease using all Fair Isaac's</p> <p>16 products and so forth.</p> <p>17 A. Yeah.</p> <p>18 Q. Okay. And we saw from Mr. Carretta's letter that he</p> <p>19 specifically pointed out that provision and the</p> <p>20 consequences of not stopping use.</p> <p>21 Today, as of today -- well, at any time, did you</p> <p>22 receive a communication from Chubb & Son that they had</p> <p>23 stopped using Blaze Advisor?</p> <p>24 A. I have not.</p> <p>25 Q. Did you ever receive a return of the documentation or a</p>	<p style="text-align: right;">1684</p> <p>1 your personal experience in the negotiation of license</p> <p>2 agreements.</p> <p>3 A. Okay.</p> <p>4 Q. And I guess let's begin with personally, speaking of</p> <p>5 you personally, not me. Speaking of you personally.</p> <p>6 How many negotiations of -- for Blaze Advisor</p> <p>7 license fees have you been a part of?</p> <p>8 A. That would be really hard to say, but it's definitely</p> <p>9 hundreds and hundreds of them.</p> <p>10 Q. And is it fair to say that you've been negotiating</p> <p>11 Blaze Advisor license agreements in one form or another</p> <p>12 since maybe 2002 or 2000?</p> <p>13 A. Even before that.</p> <p>14 Q. And as we noted in 2006 time frame, then you were the</p> <p>15 person with final authority on pricing. Is that still, was</p> <p>16 that true still in 2016?</p> <p>17 A. Yes. In 2016, absolutely.</p> <p>18 Q. Have you experience in negotiating agreements with</p> <p>19 clients where, where the license agreement that they have</p> <p>20 has come to an end, and you're negotiating with them for a</p> <p>21 new license agreement?</p> <p>22 A. Yes.</p> <p>23 Q. And you've had experience where you're negotiating a</p> <p>24 license agreement with someone who has never been a client</p> <p>25 as well?</p>
<p style="text-align: right;">1683</p> <p>1 certification that the documentation had been destroyed?</p> <p>2 A. I have not.</p> <p>3 Q. Let's turn to the subject matter of ACE American. We</p> <p>4 saw in earlier testimony that there's a small license</p> <p>5 agreement between FICO and ACE American. Are you generally</p> <p>6 familiar with that?</p> <p>7 A. I am.</p> <p>8 Q. Does that license agreement have any, any applicability</p> <p>9 to the use of Blaze Advisor by Chubb & Son, the client in</p> <p>10 this agreement?</p> <p>11 A. It does not.</p> <p>12 Q. When did you first learn that ACE American Insurance</p> <p>13 was using Blaze Advisor in connection with selling</p> <p>14 insurance, using Blaze Advisor in the applications that</p> <p>15 previously had been the ones run by Chubb & Son?</p> <p>16 A. In this lawsuit.</p> <p>17 Q. Never before?</p> <p>18 A. No.</p> <p>19 Q. So then it's obvious to say that no one from ACE</p> <p>20 American ever reached out to FICO to your knowledge to try</p> <p>21 to license Blaze Advisor to use in connection with selling</p> <p>22 insurance?</p> <p>23 A. No.</p> <p>24 Q. I want to now turn to, I want to now turn to</p> <p>25 standard -- well, I want to now turn to the experience,</p>	<p style="text-align: right;">1685</p> <p>1 A. Yes.</p> <p>2 Q. And you mentioned before that, well, discounting</p> <p>3 practices have changed. The guidelines for pricing really</p> <p>4 have not, since 2003?</p> <p>5 A. Yeah. The core -- the core pricing model has not</p> <p>6 changed, no.</p> <p>7 Q. So I would ask you to go to Exhibit 421, please.</p> <p>8 A. I'm sorry. You said 421?</p> <p>9 Q. 421. 418. It used to be called 421. Now it's called</p> <p>10 418. Let's go to 418.</p> <p>11 This is, as you see, Business Science Enterprise</p> <p>12 Decision Management Design and Deployment, Tools and</p> <p>13 Infrastructure Software Global Price List, 10/10/03.</p> <p>14 I would like to first start by just understanding</p> <p>15 the pricing methodology that FICO applies for the Blaze</p> <p>16 Advisor licenses.</p> <p>17 A. Okay.</p> <p>18 Q. And let's begin with, with this document, and if you</p> <p>19 could educate us about how to read it and how to use it.</p> <p>20 A. Okay.</p> <p>21 Q. All right? And by the by, it's been in place since</p> <p>22 2003. Over the decades, what's the reaction, what's the</p> <p>23 reaction from the marketplace to this methodology that FICO</p> <p>24 applies in pricing?</p> <p>25 A. Yeah. Ultimately the named application licensing that</p>